IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE R.BASANT

MONDAY, THE 1ST OCTOBER 2007 / 9TH ASWINA 1929

Bail Appl..No. 5871 of 2007()

CRMP.1623/2007 of SESSIONS COURT, KOTTAYAM
CRIME NO. 374/2007 of PALA POLICE STATION

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PETITIONER/ACCUSED NO.1:

BENNYCHAN JOSEPH,AGED 37,S/O.JOSEPH KUZHIMULLIL,KUZHIMULLIL HOUSE,PAYAPPAR P.O, ANTHIALAM DESOM,LALAM VILLAGE,MEENACHIL TALUK, KOTTAYAM DISTRICT.

BY ADV. SRI.P.M.ZIRAJ

RESPONDENTS:

STATE OF KERALA REPRESENTED BY PUBLIC PROSECUTOR,HONOURABLE HIGH COURT OF KERALA AT ERNAKULAM,
REPRESENTED BY SUB INPSECTOR OF POLICE, PALA POLICE STATION,ERNAKULAM.

BY ADV. SRI. JAI GEORGE, PUBLIC PROSECUTOR

THIS BAIL APPLICATION HAVING COME UP FOR ADMISSION ON 01/10/2007, THE COURT ON THE SAME DAY PASSED THE FOLLOWING:

R.BASANT, J

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B.A.No.5871 of 2007

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Dated this the 1st day of October, 2007

ORDER

Application for anticipatory bail. The petitioner is the 1st accused. The crux of the allegations against the petitioner and his co-accused is that they fraudulently created a false forged document to make it appear that his wife has assigned an item of property belonging to her to the 2nd accused. It is alleged that a lady had impersonated as the wife of the petitioner to execute that document. The 3rd accused had allegedly identified that lady to be the wife of the petitioner. The 4th accused is the transferee from the 2nd accused of the same property. Crime has been registered. Investigation is in progress. The petitioner apprehends imminent arrest. The 4th accused has already been granted anticipatory bail by this Court as per order dated 18th August,2007 in B.A.No. 5034 of 2007.

2. The learned counsel for the petitioner submits that the petitioner is absolutely innocent. False, frivolous and vexatious allegations are being raised against him. He has nothing to do with the allegedly false document in question in favour of the 2nd accused. He is brought in as accused unnecessarily, merely because of the strain in the matrimonial tie between him and his wife. The children

are now in the custody of his father in law, the de facto complainant . The petitioner has initiated proceedings before the matrimonial court. Only to vex and harass the petitioner, such false allegations are being raised. In these circumstances it is prayed that directions under Sec. 438 may be issued in favour of the petitioner .

3. The learned Public Prosecutor opposes the application. The learned Public Prosecutor submits that all the indications presently available show clearly that the document was executed in the absence of the wife of the petitioner by the petitioner and the other accused in active collusion. Grant of anticipatory bail to the 4th accused is may not influence this court while considering the application for anticipatory bail of the petitioner herein. It is true that there is matrimonial proceedings between the spouses. The totality of circumstances reveal that false/fabricated document was brought into existence in active collusion of the petitioner along with co-accused. At any rate, there is absolutely no circumstance in this case justifying invocation of the extraordinary equitable discretion under Section 438,submits the learned Public Prosecutor . This is a fit case where the petitioner must appear before the learned Magistrate and seek regular bail in the ordinary and normal course, submits the learned Public Prosecutor. Permitting the petitioner to arm himself with an anticipatory bail would effectively frustrate the investigation and hamper the smooth course of the investigation. In these

circumstances, this petition may be dismissed it is prayed.

4. Having considered all the relevant inputs, I find merit in the opposition by the learned Public Prosecutor. I shall carefully avoid any detailed discussions on merits about the acceptability of the allegations or the credibility of the data collected. Suffice it to say that I am not able to perceive any features suggesting the need for invocation of the extraordinary equitable discretion under Section 438 Cr.P.C. This is a fit case where the petitioner must appear before the learned Magistrate and seek regular bail in the ordinary and normal course. The fact that the 2nd accused in the crime has later filed a complaint against the de facto complainant that the father in law of the petitioner can have no crucial relevance while considering the petitioner's application for anticipatory bail .

5. In the result, this petition is dismissed. Needless to say, if the petitioner surrenders before the investigating officer or the learned Magistrate and applies for bail, after giving sufficient prior notice to the Prosecutor in charge of the case, the learned Magistrate must proceed to pass appropriate orders on merits, in accordance with law and expeditiously.

(R.BASANT, JUDGE)

sj